



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 13, 1992

Ms. Elaine H. Piper
Assistant City Attorney
Police Legal Advisor
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-57

Dear Ms. Piper:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14532.

You have received a request for copies of all reports relating to "all incidents that have taken place at 730 E. Yandell" during a certain time period. You advise us that 24 reports are responsive to the request. Although you do not object to release of some of the requested information, you claim that the remainder is excepted from required public disclosure by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

You assert that documents submitted as Exhibit A relate to pending investigations. Except for "first page offense report" information, which you advise us has already been released to the requestor, you claim that information relating to pending investigations is excepted from disclosure by section 3(a)(8), which excepts:

records of law enforcement agencies and prosecutors that
deal with the detection, investigation, and prosecution of crime
and the internal records and notations of such law enforcement

agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 3(a)(8) may be invoked by any proper custodian of records to information that relates to the incident. Open Records Decision No. 474 (1987) at 4. Accordingly, except for first page offense report information identified as available to the public by Open Records Decision No. 127 (1976), information included in Exhibit A may be withheld from required public disclosure under section 3(a)(8).

Exhibit B contains reports that name "non-arrested suspects." You seek to withhold the names under sections 3(a)(1) and 3(a)(8). Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The information you have submitted is not of the type ordinarily excepted from required public disclosure by common-law or constitutional privacy interests. We conclude, therefore, that names of non-arrested suspects may not be withheld from required public disclosure under section 3(a)(1).

To withhold information under section 3(a)(8), a governmental body must show that release would undermine a legitimate interest of law enforcement or prosecution and a case-by-case approach is necessary. Open Records Decision No. 434 (1986), *citing Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not demonstrated that release of the requested information would undermine a legitimate interest of law enforcement or prosecution. Accordingly, the names of non-arrested suspects may not be withheld under section 3(a)(8). Exhibit B must be released in its entirety.

Exhibit C includes investigative files that have been closed. You claim that some of this information is excepted from disclosure by section 3(a)(8), but have not demonstrated how release of the information would undermine a legitimate interest of law enforcement or prosecution. *Id.* Accordingly, Exhibit C must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-57.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Sarah Woelk".

Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/GK/lcd

Ref.: ID# 14532
D# 14662

cc: Mr. Peter Bright
Attorney at Law
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